

142 FERC ¶ 61,153
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 27, 2013

In Reply Refer To:
Cheyenne Plains Gas Pipeline
Company, L.L.C.
Docket No. RP13-444-000

Cheyenne Plains Gas Pipeline Company, L.L.C.
Post Office Box 1087
Colorado Springs, CO 80944

Attention: Francisco Tarin
Director, Regulatory Affairs

Dear Mr. Tarin:

1. On January 11, 2013, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) filed a request for waiver of certain capacity release and other Commission rules, regulations, and policies, as well as certain capacity release sections of the General Terms and Conditions (GT&C) of its tariff. On January 30, 2013, Cheyenne Plains filed supplemental information clarifying that it seeks a limited waiver to facilitate the assignment and permanent release of capacity from Bill Barrett Corporation (Bill Barrett) to Encore Energy Partners Operating, LLC (Encore) as part of the sale of assets to Vanguard Natural Resources, LLC (Vanguard)¹ within 90 days following the Commission's approval of the waivers. Cheyenne Plains states that Bill Barrett notified it that the asset sale was completed as of December 31, 2012. As discussed below, the Commission grants the requested waivers.

2. Cheyenne Plains explains that, on May 20, 2003, it filed an application for a certificate of public convenience and necessity (Application) seeking authority to construct and operate a new interstate natural gas pipeline.² Cheyenne Plains states that,

¹ Cheyenne Plains states that Encore is an affiliate of Vanguard.

² Cheyenne Plains cites *Colorado Interstate Gas Co.* and *Cheyenne Plains Gas Pipeline Company, L.L.C.*, 105 FERC ¶ 61,095 (2003), *order issuing certificates*, 106 FERC ¶ 61,275 (2004).

as part of the Application, it requested negotiated rate authority and filed a number of non-conforming negotiated rate Transportation Service Agreements (TSA) that supported the project, including a non-conforming negotiated rate TSA for Bill Barrett.

3. Cheyenne Plains further states that Bill Barrett recently notified it of the plan to sell certain natural gas assets to Vanguard. According to Cheyenne Plains, the parties completed this transaction as of December 31, 2012. Consequently, continues Cheyenne Plains, Bill Barrett seeks a permanent release to Encore of the capacity subject to the original non-conforming negotiated rate TSA.

4. To facilitate the transfer of the TSA to Encore, Cheyenne Plains requests a waiver of Section 9.6(a)(i) of its General Terms and Conditions (GT&C).³ Cheyenne Plains explains that, although the release of Bill Barrett's TSA would meet the term requirement, the TSA is subject to a negotiated rate rather than the maximum reservation rate established in its tariff. Additionally, Cheyenne Plains requests a waiver of the Commission's corresponding regulation at 18 C.F.R. § 284.8(h)(1)(iii) to permit the capacity release at the negotiated rate. Cheyenne Plains also requests a waiver of Section 9.13(b) of its GT&C, which provides that the releasing shipper will remain bound by and liable for payment of the reservation charge unless the replacement shipper is paying the maximum reservation rate for the entire contract term. Cheyenne Plains emphasizes that Bill Barrett wishes to relinquish all financial ties to the capacity it previously held and to allow Encore to assume all liability for payment relating to the released capacity.

5. Cheyenne Plains argues that the requested waivers are in the public interest because they will facilitate the Commission's objective of not unnecessarily inhibiting the permanent release of capacity that a shipper no longer needs or wants. Cheyenne Plains also states that the permanent release from Bill Barrett to Encore will allow Cheyenne Plains to remain financially indifferent to the release. Cheyenne Plains maintains that its request is consistent with similar waiver requests previously granted by the Commission.⁴

³ Cheyenne Plains states that Section 9.6(a) of its GT&C provides that an open season for a prearranged capacity release is not required if the release is for more than one year at the maximum reservation rate under the applicable tariff rate schedule. Thus, unless waived, this provision would require an open season for the subject transfer of assets at less than the maximum reservation rate.

⁴ Cheyenne Plains cites *Cheyenne Plains Gas Pipeline Company, L.L.C.*, 129 FERC ¶ 61,047 (2009); *Questar Overthrust Pipeline Company*, 141 FERC ¶ 61,060 (2012); *Kerr McGee Energy Services Corp.*, 139 FERC ¶ 61,175 (2012).

6. Public notice of the filing was issued on January 14, 2013. Interventions and protests were due on or before January 23, 2013, as provided by the notice. Public notice of the supplemental filing was issued February 7, 2013. Interventions and protests were due on or before February 11, 2013, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

7. The Commission finds that Cheyenne Plains has sufficiently supported its request for waivers and that the waivers are consistent with similar previously granted waivers that permit capacity to be released on a permanent basis at the same rates that the releasing shipper(s) is (are) currently paying.⁵ As the Commission explained in *North Baja*, a pipeline is only required to allow a permanent capacity release if it will be financially indifferent to the release. If the Commission were to require that Cheyenne Plains' permanent release be posted for bidding subject to the maximum recourse rate, as required by the capacity release regulations, bidders could not offer to pay the existing negotiated rate for the entire term of the release because such a rate could violate the maximum rate ceiling during future periods. Therefore, waiver of the bidding requirement for the permanent release is necessary to ensure that the pipeline will be financially indifferent to the release and thus to avoid inhibiting the use of a permanent release to transfer capacity the releasing shipper no longer needs or wants. Further, the Commission's policy in recent years has been to grant temporary waivers of its capacity release regulations and policies to permit parties to consummate mergers, corporate consolidations, asset sales, and similar transactions.⁶

8. Accordingly, for good cause shown, the Commission grants Cheyenne Plains' request for waivers of the specified capacity release regulations, policies, and tariff provisions to allow the permanent release of the TSA. Specifically, the Commission

⁵ See, e.g., *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009) (*North Baja*).

⁶ See *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009) (capacity release posting and bidding requirements would not necessarily apply in the cases of the merger or sale of entire business units as part of a corporate restructuring, including the transfer of transportation contracts, supply contracts, employees, data systems and technology).

grants limited, temporary waiver of section 284.8 of its regulations,⁷ which governs the release of firm capacity, the prohibition on tying, and the posting and bidding requirements applicable to capacity release transactions. In addition, the Commission grants limited, temporary waiver of those sections of Cheyenne Plains' tariff specified above to permit the permanent release of the TSA to Encore, as proposed. The waivers are effective on the issuance date of this order and will remain in effect for 90 days following the closing date of the transaction described in this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ 18 C.F.R. § 284.8 (2012).